

Recent Civil Decisions of the United States Supreme Court: The 1998-1999 Term

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During the 1998-1999 term, the Supreme Court reviewed a number of different civil issues.¹ Among the most notable constitutional issues addressed this term, the Court extended state sovereign immunity by determining that Congress does not have the authority to force states to be sued in state court in a variety of instances. The Court also addressed First Amendment freedom of speech issues in the context of casino advertising and initiative petition circulation. Of significant interest in California, the Court deemed the state's welfare practice of providing lower benefits to some new residents a violation of the Fourteenth Amendment. The Court also reviewed the interpretation and application of numerous federal and state statutes. In particular, the Court focused a considerable amount of time interpreting different aspects of the Americans with Disabilities Act, as well as Title VII and Title IX. The Court also considered the application of standards for the admission of expert testimony.

FIRST AMENDMENT

The Supreme Court considered two distinct First Amendment issues during the term. First, the Court addressed the right of casinos to advertise in *Greater New Orleans Broadcasting Association v. United States*.² Petitioners were an association of Louisiana broadcasters who would broadcast promotional advertising for private legal casinos if they were not subject to fines and imprisonment under 18 U.S.C. section 1304. The Court specifically held that the prohibition of broadcasting lottery information could not be applied to lawful private gambling casinos under the First Amendment. At the outset, Justice Stevens, writing for the majority, explained that in order to determine if a restriction on "commercial" speech is constitutional, the four-part test established in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*³ must be considered: (1) whether the expression concerns lawful activity and is not misleading; (2) whether the asserted governmental interest is substantial; (3) whether the regulation directly advances the governmental interest asserted; and (4) whether it is not more extensive than is necessary to serve that interest. The Court held that section 1304 does not satisfy these standards because, among other things, the restrictions have a limited impact on the government's goals since advertising is allowed for Native American gaming and state-run lotteries.

The Court also addressed the First Amendment in the context of initiative petitions in *Buckley v. American Constitutional Law Foundation*,⁴ where the Court overturned restrictions created in a Colorado statute on the initiative process that required petition circulators to be registered voters and wear badges identifying their names, and required the disclosure of names and addresses of paid circulators. The Court deemed the registered voter requirement unconstitutional because it limits the number of individuals who may circulate initiative petitions, in turn placing a significant burden on expression. With regard to the name badge requirement, the Court deemed the requirement unconstitutional because it subjected circulators to potential harassment, noting that "the injury to speech is heightened for the petition circulator because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest." Next, the Court found that the disclosure of payment requirement was unconstitutional because it provided the voters with no valuable information. Three restrictions were approved by the Court: that circulators be at least 18 years of age, that petitions may be circulated for a maximum of eight months, and that circulators must sign an affidavit attesting that they have read and understand the laws of petition circulation. Justice Ginsburg approved of these restrictions because it is important that states that maintain an initiative process "have considerable leeway to protect the integrity and reliability of the initiative process."

SEVENTH AMENDMENT

In *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*,⁵ the Court considered the Seventh Amendment right to a jury trial for claims under 42 U.S.C. section 1983. The Court held that an action under section 1983 is an "action at law" and, therefore, includes a right to a jury trial, even though section 1983 itself does not specifically confer the right. Justice Kennedy, writing for the Court, explained that while section 1983 did not exist when the Seventh Amendment was written, "the Seventh Amendment jury guarantee extends to statutory claims unknown to the common law, so long as the claims can be said to 'sound basically in tort.'" Additionally, such a suit seeks legal relief because just compensation is akin to ordinary legal monetary relief.

Footnotes

1. For a more in-depth review of the decisions of the past Term, see CHARLES H. WHITEBREAD, RECENT DECISIONS OF THE UNITED STATES SUPREME COURT, 1998-1999 (Amer. Acad. of Jud. Educ. 1999).

2. 527 U.S. 173 (1999).

3. 447 U.S. 557 (1980).

4. 525 U.S. 182 (1999).

5. 526 U.S. 687 (1999).

FOURTEENTH AMENDMENT

The Court also considered the constitutional right to travel. In *Saenz v. Roe*,⁶ the Court held in a 7-2 decision that a state statute imposing durational residency requirements in order to receive welfare violates the Fourteenth Amendment right to travel. This decision was made in response to California's welfare policy to provide new residents of the state with only the benefits that would have been received in their previous state of residence, even though such may be lower than what long-time California residents may receive. Justice Stevens, writing for the majority, explained that while the right to travel is not found in the text of the Constitution, the right is "firmly embedded in our jurisprudence." The Court determined that in order for the California statute to be deemed constitutional, the state must show: (1) why it is sound fiscal policy to discriminate against those who have been citizens for less than one year; and (2) why it is justified to treat members of the newly arrived class differently. Ultimately, the Court found that there is no legitimate justification for the disparity here. Justice Stevens noted that by simply reducing all California welfare recipients benefits by 72 cents per month, the state could achieve the same savings. Therefore, the Court concluded that "the State's legitimate interest in saving money provides no justification for its decision to discriminate among equally eligible citizens."

DUE PROCESS

The Court addressed due process rights to worker's compensation in *American Manufacturers Mutual Insurance Co. v. Sullivan*.⁷ The Court held that a worker's compensation regime that withholds payment for disputed treatment until an independent inquiry is conducted to determine whether the treatment is necessary or reasonable does not violate the Fourteenth Amendment because the insurer is not a state actor and the employee is not deprived of property.

STATE SOVEREIGN IMMUNITY

State sovereign immunity was significantly extended in *Alden v. Maine*,⁸ where the Court held in a 5-4 decision that Congress may not subject non-consenting states to private suits for damages in state courts. Justice Kennedy, writing for the majority, explained that "the sovereign immunity of the States neither derives from nor is limited by the terms of the Eleventh Amendment." Instead, the majority found that "the States' immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today ... except as altered by the plan of the Convention or certain constitutional Amendments." The Court noted that the decision in this case does not completely eliminate judicial review of the actions of states because states may still consent to judicial review in their own courts and immunity does not bar suits against municipal and local government entities.

The Court further protected state sovereign immunity in federal court in companion cases *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*⁹ and *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*.¹⁰ In both cases, the Court held that Congress must possess power under the Fourteenth Amendment Due Process Clause in order to abrogate state sovereign immunity in federal courts. In one case, College Savings filed suit in federal district court against the Florida Prepaid Postsecondary Education Expense Board, alleging that Florida Prepaid infringed upon College Savings' patent under the Patent Remedy Act. Upon review, the Court explained that in order for state sovereign immunity to be limited, two conditions must be satisfied: (1) Congress must expressly abrogate the immunity; and (2) Congress must possess constitutional power to do so. The Court noted that, according to *Seminole Tribe of Florida v. Florida*,¹¹ Congress does not have the power to abrogate immunity under Article I of the Constitution, but Congress does retain authority to abrogate immunity under Section 5 of the Fourteenth Amendment. The Court noted that in order "for Congress to invoke Section 5, it must identify conduct transgressing the Fourteenth Amendment's substantive provisions, and must tailor its legislative scheme to remedying or preventing such conduct." Therefore, in order to abrogate immunity, it must be unremedied patent infringement that constitutes the Fourteenth Amendment violation. The Court observed that when Congress enacted the Patent Remedy Act, it did not suggest it was attempting to remedy a Fourteenth Amendment violation. Ultimately, the Court concluded, "The historical record and the scope of coverage therefore make it clear that the Patent Remedy Act cannot be sustained under § 5 of the Fourteenth Amendment."

In the second case, College Savings filed an action maintaining that Florida Prepaid violated section 43(a) of the Lanham Act,¹² which creates a private right of action against any person, including the state, who uses false descriptions to make false representations in commerce. Justice Scalia, writing for the same five-justice majority, found no property interest protected by the Due Process Clause of the Fourteenth Amendment. The Court noted that, "[u]nsurprisingly, petitioner points to no decision of the Court (or any other court, for that matter) recognizing a property right in freedom from competitor's false advertising about its own products." Therefore, the Court held that Congress does not have the authority in this instance to abrogate immunity.

FEDERAL SOVEREIGN IMMUNITY

The Court further protected federal sovereign immunity in *Department of the Army v. Blue Fox, Inc.*¹³ The Court held that a subcontractor may not enforce an equitable lien against the government based on the principles of sovereign immunity. The Supreme Court viewed Blue Fox's request for an equitable lien

6. 526 U.S. 489 (1999).

7. 526 U.S. 40 (1999).

8. 527 U.S. 706 (1999).

9. 527 U.S. 666 (1999).

10. 527 U.S. 627 (1999).

11. 517 U.S. 44 (1996).

12. 15 U.S.C. § 1125(a).

13. 525 U.S. 255 (1999).

as a request for “money damages.” Chief Justice Rehnquist, writing for a unanimous court, concluded that section 10(a) of the Administrative Procedure Act,¹⁴ which waives immunity in actions seeking relief “other than money damages,” does not negate the long-standing principle that sovereign immunity bars the enforcement of liens against the Government unless sovereign immunity is waived. The Court explained that the relief that would be afforded by the lien was a substitute for the suffered loss, not a specific remedy giving the claimant the exact thing to which he was entitled. Thus, it was equivalent to a request for money damages and, the Court concluded, the “respondent’s action to enforce an equitable lien falls outside § 702’s waiver of sovereign immunity.”

TITLE VII

The Court considered the award of damages under Title VII in two separate cases. In *West v. Gibson*,¹⁵ the Court declared that the Equal Employment Opportunity Commission (EEOC) has the power under Title VII to award compensatory damages against federal agencies that engage in employment discrimination. In this case, the respondent had filed a complaint claiming that the Department of Veterans Affairs discriminated against him by failing to promote him because of his gender. The EEOC found in favor of respondent and awarded him the promotion and backpay. Three months later, respondent filed a claim in district court to recover compensatory damages and to force the EEOC to comply with its prior decision. Justice Breyer, writing for the five-justice majority, reasoned that the language of section 717(b), “read literally,” creates sufficient authority for the EEOC to award compensatory damages. The term “including” clarifies that the enforcement powers are not limited to the options listed in the section. The Court further noted that “section 717’s general purpose is to remedy discrimination in federal employment.” With the addition of the Compensatory Damages Amendment, the Court concluded that compensatory damages are “appropriate” to enforce provisions of the Act. The Court noted that to find otherwise “would force into court matters that the EEOC might otherwise have resolved.” Thus delaying the resolution of the matter by the EEOC “would increase the burdens of both time and expense that accompany efforts to resolve hundreds, if not thousands, of such disputes each year.”

In *Kolstad v. American Dental Association*,¹⁶ the Court found that punitive damages may be imposed against a private employer for violating Title VII without a showing of “egregious discrimination” so long as the employer discriminates in the face of a perceived Title VII violation. Justice O’Connor concluded that “Congress plainly sought to impose two standards of liability—one for establishing a right to compensatory damages and another, higher standard that a plaintiff must satisfy to qualify for punitive damages.” The Court explained that the terms “malice” and “reckless indifference” address the

employer’s knowledge that they may be violating federal law and engaging in discrimination. Therefore, the majority found that the appropriate standard to award punitive damages is that “the employer must at least discriminate in the face of a perceived risk that its actions will violate federal law.” Punitive damages based on vicarious liability will not be imposed when the employer makes a good faith effort to comply with Title VII.

TITLE IX

The Court addressed the subject of student-on-student harassment in *Davis v. Monroe County Board of Education*.¹⁷ Petitioner was the mother of a female minor who was the victim of sexual harassment by a fellow fifth grade student. Petitioner repeatedly reported the harassment to several school teachers and at least one incident was actually observed by a teacher. Nevertheless, the school failed to do anything to stop or punish the harasser and the victim suffered significant emotional problems. In a 5-4 decision, the Court held that the claim should not have been dismissed because student-on-student harassment is an acceptable basis for a Title IX claim. Justice O’Connor, writing for the Court, observed that because Title IX was enacted pursuant to Congress’s power under the Spending Clause, “private damages actions are available only where recipients of federal funding have adequate notice that they could be liable for the conduct at issue.” The school board cannot be held liable for the conduct of a student; rather, the board can only be held liable “for its own decision to remain idle in the face of known student-on-student harassment in its schools.”

DISABILITY

This term, the Supreme Court spent a considerable amount of time addressing claims under the Americans with Disabilities Act (ADA). The Court took several occasions to consider the appropriate method one must take in order to deem an individual disabled under the ADA. In both *Murphy v. United Parcel Service, Inc.*,¹⁸ and *Sutton v. United Air Lines, Inc.*,¹⁹ the Court held that corrective and mitigating measures should be taken into consideration in determining whether an individual is disabled under the ADA. Justice O’Connor, writing for the majority in both cases, asserted in *Sutton*: “Looking at the Act as a whole, it is apparent that if a person is taking measures to correct for, or mitigate, a physical or mental impairment, the effects of those measures—both positive and negative—must be taken into account” to determine whether a person is disabled. Justice O’Connor further explained that a person who is taking measures to correct a problem might not “have an impairment that substantially limits a major life activity.” Furthermore, the majority observed that if employers were expected not to take into account mitigating measures, as many as 160 million Americans would be deemed disabled, far beyond what Congress intended when it passed the ADA. This same principle was reinforced in *Albertsons, Inc. v. Kirkingburg*.²⁰ In

14. 5 U.S.C. § 702.

15. 527 U.S. 212 (1999).

16. 527 U.S. 526 (1999).

17. 526 U.S. 629 (1999).

18. 527 U.S. 516 (1999).

19. 527 U.S. 471 (1999).

20. 527 U.S. 555 (1999).

Albertsons, a unanimous Court went further to find that under the ADA, employers may base employment qualifications for truck drivers on Department of Transportation (DOT) standards, but are not required to accept the DOT's experimental waivers. The Court found that "the regulatory record made it plain that the waiver regulation did not rest on any final, factual conclusion that the waiver scheme would be conducive to public safety in the manner of the general acuity standards and did not purport to modify the substantive content of the general acuity regulation in any way."

In *Wright v. Universal Maritime Service Corporation*,²¹ the Court unanimously found that a general arbitration clause in a collective bargaining agreement does not require longshoremen to use arbitration to resolve violations of the Americans with Disabilities Act. The Court reasoned that while an arbitrator is in a better position to interpret the collective bargaining agreement, this claim deals with the interpretation of the ADA and not the agreement. Therefore, it would be mistaken to presume that the arbitrator is in a better position to resolve the issue. The Court further found that if framers of an agreement want to require that claims under the ADA be arbitrated, the provision in the agreement must be "particularly clear." In previous cases regarding the arbitration of discrimination claims under the National Labor Relations Act, the Court had found that if arbitration is required, it must be "clear and unmistakable" in the agreement.²² The Court concluded that the same standard should be applied to ADA claims.

The Court also considered the confinement of mentally disabled individuals under the ADA. In *Olmstead v. L.C.*,²³ the Court held that a state may take into account the availability of resources in determining whether mentally disabled patients living in state-run institutions are entitled to immediate community placement after doctors approve of the community placement. This decision was in response to a suit filed by two mentally disabled patients housed in a Georgia healthcare facility who had not been released to a community-based program despite the fact that their doctors had approved the release. Writing for the majority, Justice Ginsburg first explained that "unjustifiable institutional isolation" of disabled persons constitutes discrimination. Nevertheless, the Court concluded that states must be afforded some leeway because if states are not allowed to consider available resources in determining placement, limited resources might force states to close institutions in order to comply with a finding that those who have been approved for community-based treatment must be immediately placed. Justice Ginsburg noted that "the ADA is not reasonably ready to impel States to phase out institutions, placing patients in need of close care at risk."

The Court also unanimously found in *Cleveland v. Policy Management Systems Corp.*,²⁴ that a claim of disability discrimination in the workplace is not automatically invalid if the individual also applies for Social Security Disability Insurance

claiming total disability. The applicant should be afforded an opportunity to explain why she has claimed total disability in one instance and the ability to work in the other instance.

The Court also reviewed the Individuals with Disabilities Education Act (IDEA) in *Cedar Rapids Community School District v. Garret F.*,²⁵ where the Court held that continuous nursing service is a "related service" under the IDEA and school districts must, therefore, bear the financial burden of providing such services to students who require them in order to attend school.

EVIDENCE

The Court considered the application of the reliability standards to expert testimony from *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,²⁶ in federal court. In *Kumho Tire Co. v. Carmichael*,²⁷ the Court held that the general principles of *Daubert* apply to all expert testimony regardless of whether it is "scientific." Justice Breyer, writing for the Court, found that the trial court may consider the various factors set forth in *Daubert* when determining the reliability of expert testimony and that the trial court should be afforded "latitude in deciding how to test an expert's reliability." A trial court may consider all, some, or none of the *Daubert* factors in its analysis.

CONCLUSION

Ultimately, the Supreme Court did not announce any dramatic decisions radically altering the current trends in modern jurisprudence. For the most part, the Court followed the standards set forth in decisions from previous terms whenever possible. Nevertheless, the Court's decisions, particularly with regard to sovereign immunity, were quite significant. The Court's focus on the ADA will most likely assist employers and employees in the interpretation of the parameters of the statute and the Court's approach to the admission of expert testimony has further extended the discretion of trial courts.



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21. 525 U.S. 70 (1998).

22. *E.g.*, *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

23. 527 U.S. 581 (1999).

24. 526 U.S. 795 (1999).

25. 526 U.S. 66 (1999).

26. 509 U.S. 579 (1993).

27. 526 U.S. 137 (1999).